

1

COURT 1 THE UNITED STATES DISTRICT  
2 FOR THE DISTRICT OF NEW JERSEY  
CRIMINAL NO. 05-318 (WGB)

3 - - - - -x  
4 UNITED STATES OF AMERICA, :  
5 -vs- : TRANSCRIPT  
6 ERIK SANCHEZ, : OF  
7 Defendant. : PROCEEDINGS  
8 - - - - -x (SENTENCE)

9 Newark, New Jersey  
10 August 3, 2006

11 B E F O R E: HONORABLE WILLIAM G. BASSLER,  
12 Senior U.S.D.J.

13 A P P E A R A N C E S:

14 CHRISTOPHER J. CHRISTIE, ESQ.,  
15 United States Attorney,  
16 BY: MELISSA JAMPOL, ESQ.,  
Assistant United States Attorney  
For the Government

17 RICHARD COUGHLIN, ESQ.,  
18 Federal Public Defender  
19 BY: DONALD MC CAULEY, ESQ.,  
Assistant Federal Public Defender  
For the Defendant

21  
22 Pursuant to Section 753 Title 28 United States Code, the  
record following transcript is certified to be an accurate  
23 taken stenographically in the above entitled proceedings.

24

---

JOHN KEVIN STONE, C.S.R.

25

Official Court Reporter

JOHN KEVIN STONE, CSR

2

1 THE COURT: Good morning everybody.

2 May I have appearances, please.

3 MS. JAMPOL: Good morning, Your Honor.

4 Assitant United States Attorney Melissa Jampol

5 appearing on behalf of the Government.

6 MR. MC CAULEY: Morning, Your Honor.

7 Donald McCauley, Assistant Federal Public  
Defender,

8 appearing on behalf of Erik Sanchez.

9 THE COURT: Mr. Sanchez, good morning.

10 THE DEFENDANT: Morning, sir.

11 THE COURT: Let me ask you this. Have you read  
the

12 presentence report?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And, counsel, have you reviewed the  
15 presentence report with your client?

16 MR. MC CAULEY: Yes, Your Honor.

17 THE COURT: I adopt the presentence report's  
18 findings as the court's.

19 Let me, before I forget, advise the defendant  
that

20 he has the right to appeal the conviction if he believes  
the

21 guilty plea is somehow unlawful or involuntarily, or  
there's

22 some other fundamental defect of the proceedings that  
wasn't

23       waived by the guilty plea.

24               Mr. Sanchez, you also have a statutory right to

25       appeal your sentence under certain circumstances,

JOHN KEVIN STONE, CSR

3

law. 1 particularly if you think the sentence is contrary to

2 You may have waived those rights as part of the plea  
3 agreement -- you may have entered into a plea agreement  
4 which waives some or all of your rights given the  
sentence

5 itself. Those rights waivers are generally enforceable,  
but  
6 if you believe the waiver is unenforceable, you can  
7 present your theory to the federal court.

8 At any rate, I advise you you have the right to  
9 appeal in forma pauperis, and the court will prepare and  
10 file a notice of appeal upon your request.

11 I further advise you that with few exceptions,  
any  
12 notice of appeal must be filed within ten days of entry  
of a  
13 judgment.

14 Counsel, I don't believe we have any dispute  
over  
15 the guideline range. The total offense level is 21,  
16 criminal history category is five, which brings the  
sentence  
17 range to 70 to 87 months.

18 MR. MC CAULEY: Yes, Your Honor.

19 MS. JAMPOL: Yes, Your Honor.

20 THE COURT: Mr. McCauley, I'll hear you on your  
21 application.

22                   You can be seated.

23                   MR. MC CAULEY: Your Honor, there was one

24           correction to the presentence report that I neglected to

25           communicate to the court. It's the date of birth. It

has

JOHN KEVIN STONE, CSR

4

1 his date of birth as 2-16-59, it's really 2-16-69.

2 THE COURT: 2-16 --

3 MR. MC CAULEY: 69.

4 THE COURT: 69:

5 MR. MC CAULEY: And he's 36 years old, not 46.

6 THE COURT: Okay. Thank you.

7 MR. MC CAULEY: Apologize for that.

8 THE COURT: All right.

9 MR. MC CAULEY: Your Honor, you will note that  
the

10 guidelines are advisory, and I'm asking that the court

11 sentence below the otherwise advisory guidelines for the  
70

12 to 87 months, essentially; that he's basically a  
deportable

13 alien, once he completes whatever sentence Your Honor

14 imposes, he will then be transferred to the custody of  
the

15 Immigration and Naturalization Service, where he'll serve

16 another six months prior, before he gets deported.

17 Also, because of his status as an illegal alien,  
18 he's not eligible for a halfway house the last six  
months.

19 THE COURT: Right.

20 MR. MC CAULEY: So just by virtue of his alien  
21 status, he does a year more than any other defendant who  
22 would be at level 21, category five. Meaning any citizen

five           23       doing any crime that yields a level 21 and a category  
                 24       has this range, but they have the benefit of doing six  
                 25       months less in a halfway house, and then don't face the

JOHN KEVIN STONE, CSR



5

1 subsequent incarceration.

2 THE COURT: Right.

3 MR. MC CAULEY: So that no where in the  
guidelines

4 is that accounted for in the manuals.

5 THE COURT: Right.

6 MR. MC CAULEY: I'd ask Your Honor to take that  
7 into consideration.

8 And then when you look at the 3553(a) factors --

9 THE COURT: Would you excuse me just a second.

10 ( Pause ).

11 THE COURT: I'm sorry, Mr. McCauley. Stay with  
me.

12 Go ahead.

13 MR. MC CAULEY: When we look at the 3553(a)  
14 factors, you know 3553(b) directs the court by statute  
not

15 to impose as a matter of law anything beyond what is  
16 necessary to achieve the four traditional goals of  
17 sentencing. And all of those goals I think are primarily  
18 directed toward citizens, people that are going to remain  
in

19 our society, people that are going to walk our streets  
20 again. We're interested that they be deterred, we're  
21 interested that they be rehabilitated, and we're  
interested

22 in retribution. I think those goals are less obtained in

23       the case of an alien who can never come back here. And  
24       never be back here.

25               Now, he did come back illegally. And that's the

JOHN KEVIN STONE, CSR

6

road 1 offense in this case. But I'm saying it's been a long  
2 for him. But he's got the message, knowing he can't come  
3 back here again. He was under a misimpression, and  
4 apparently it's a misimpression throughout the Central  
5 American, Latin American countries, that if you come back  
6 and you behave, you don't get arrested, and you have a  
wife 7 who's a citizen, have children who are citizens, that  
some 8 day you'll be able to stay here. That's a total fallacy.  
9 But that was his impression.

10 He knows it loud and clear now that that can't  
11 happen. These deportation laws are mandatory. But that  
12 explains why he thought he could come back.

13 And the Congress even contributes to that  
14 impression, I suggest, in the last two years, in talking  
15 about all immigration reform, and whether this provision  
is 16 going to amnesty or it's going to be effective amnesty,  
and 17 that word goes out through the world, and it's a  
18 misimpression. It doesn't exist.

19 But it's loud and clear now. 16 months after  
his 20 arrest in this case he knows he can't come back. He's  
21 looking to make a life in Spain, hopefully, where his  
22 children who were citizens can visit with him.

23                   So I think when Your Honor looks, we have  
someone,  
24           why incarcerate him for six years, when, at that great  
25           expense, needless expense, when you could impose  
something

JOHN KEVIN STONE, CSR

7

1 less, and still achieve those four goals under 3553.

2 And taking into consideration the hard time he's  
3 done, my papers say 13 months, that was when I began  
4 drafting this. It's actually 16 months. I know the  
5 Government is going to stand up and say, well, at least  
the  
6 three months were McCauley's fault, and I accept the  
7 responsibility for that.

8 But even the 13 months, it's a hell there in  
9 Passaic County. The Government criticizes me that the  
10 exhibits I attached, especially I guess from the Sheriff  
11 Speziale, who runs that building, are dated. Sheriff  
12 Speziale said nothing to contradict those documents in  
all  
13 of this time.

14 We also know six months ago the Department of  
15 Homeland Security canceled a contract with the Passaic  
16 County Jail because of the conditions under which their  
17 people were being housed. They couldn't tolerate  
anymore.

18 There were a number of civil litigations going on, and it  
19 was easier to cancel the contract than try to defend the  
20 conditions at that jail.

21 I would ask Your Honor to consider all of that  
and  
22 sentence below the guidelines. He's never coming back  
here.

you           23           And whatever sentence Your Honor imposes, I'd ask that  
                 24           recommend that be designated to serve his time at FCI  
                 25           Beaumont, Texas. He has an elderly father and mother who

JOHN KEVIN STONE, CSR

8

1 live in Houston. And that is the closest facility to  
2 Houston. They will be able to visit him for whatever  
period  
3 of incarceration he has. Because it's not likely they'll  
be  
4 able to visit him once he's deported, never to return  
here.

5 Thank you.

6 THE COURT: You're welcome.

7 Before I impose sentence, Mr. Sanchez, is there  
8 anything you would like to say?

9 THE DEFENDANT: Yes, sir.

10 First of all, I would like to apologize to you  
and  
11 to this country for all the offense I have done. And my  
12 original purpose was to be reunited with my kids and  
wife.

13 I took that chance, and I understand that I have to be --  
I  
14 got to be punished. And I also, you know, would like to  
say  
15 that this 16 months that I've been in Passaic County  
Jail,  
16 it put me, you know, sick. And I'm completely destroyed,  
17 you know, by being in that count --

18 THE COURT: By what?

19 THE DEFENDANT: -- by being in that Passaic  
20 County. That's all I got to say, sir.

21 THE COURT: All right.

22 Please be seated.

23 The Government have anything to add?

24 MS. JAMPOL: Your Honor, I addressed many of  
these

25 arguments in my first submission to the court.

JOHN KEVIN STONE, CSR



9

1 THE COURT: Right.

2 MS. JAMPOL: Which addresses a number of these  
3 things.

4 Just to highlight some things, in response to  
Mr.

5 McCauley's comments here today. The basic gist of the  
6 defendant's application is that he should be rewarded  
before

7 this court for being an illegal alien. That is his view  
in

8 his first request, stating that he would serve additional  
9 time of six months, and that he's not eligible for a  
halfway

10 house as an alien status. And the Government's response  
to

11 that -- and the second point that Mr. McCauley makes, is  
12 nowhere in the guidelines is this particular factor  
13 addressed, and there's two responses I want to make to  
that.

14 The first is that as Your Honor well knows, over  
15 the 18 year history of the sentencing guidelines, that  
each

16 specific offense is specifically examined to determine  
where

17 on the sentencing guideline range, which level category  
18 offense should it be determined, should the defendant --  
19 should the defendant meet that particular area. And the  
20 defendant in this particular case started off as a level  
21 eight, but received a 16 point enhancement due to his

22 criminal history, and the fact that he'd been previously  
23 deported. That, in and of itself, is -- shows the  
careful  
24 planning the guidelines have taken to take into  
25 consideration the defendant's particular status. And as

JOHN KEVIN STONE, CSR

10

1       such, I would urge Your Honor to look at him not in a  
realm  
2       of all individuals who are classified as level 21  
offenders,  
3       whether they be individuals who were carrying handguns  
4       illegally as convicted felons, or as any other narcotics  
5       offense, but to look at the defendant in the category of  
6       individuals who have been previously deported and who  
have  
7       illegally re-entered this country. And as such, it is  
the  
8       Government's contention that the guidelines do take this  
9       into consideration when determining which level category  
the  
10      defendant would fit in. And as such, it is the  
Government's  
11      position that the guideline sentence in this particular  
case  
12      is a reasonable sentence, as I indicated in my August 1st  
13      submission.  
14              The second is in response to Mr. McCauley that  
no  
15      where in the guidelines does it take into consideration  
that  
16      the defendant is a deportable alien. And that is because  
it  
17      is a specific factor that is specifically prohibited  
under  
18      the sentencing guidelines.  
19              Under the guideline regime, as Your Honor knows,

20 the defendant's alien status and his status is something  
21 that the court was not permitted to take into account.  
Of  
22 course, under the Booker regime and under Section 3558,  
that  
23 is something Your Honor is entitled to take into  
24 consideration.

25 But it is the Government's contention, as I  
stated

JOHN KEVIN STONE, CSR

11

1 in my memorandum to the court, that it actually should be  
2 looked at the other way. It should be looked at in one  
of  
3 the goals of Section 3553(a), this action of deterrence  
and  
4 this action of the need to promote respect for the law.

5 This particular defendant does not stand before  
6 this court having been deported once. He was deported on  
7 two separate occasions. On two separate occasions he  
8 appeared before an immigration judge and was specifically  
9 warned that he was not permitted to re-enter this country  
10 without specific authorization by the Attorney General.

11 There's paperwork that's been turned over to the  
12 defense as part of the discovery that indicates that the  
13 defendant specifically swore that he understood this  
14 particular ruling by the court. And in both cases the  
15 defendant promptly ignored the ruling of the court, did  
what  
16 he wanted, and re-entered the country. But it's not only  
he  
17 re-entered the country, Your Honor. It's once he re-  
entered  
18 the country he continued to commit crimes.

19 The defendant has indicated to Your Honor that  
the  
20 reason he re-entered this country was to be reunited with  
21 his wife. But as the PSR makes very clear, he not only

his           22           reunited with his wife, he then committed crimes against  
                 23           wife. And he was arrested in Texas after a domestic  
clear,         24           altercation involving his wife. And as the PSR makes  
his           25           there were numerous restraining orders involving him and

JOHN KEVIN STONE, CSR

12

1 wife, and if Your Honor would like me to point out the  
2 specific statutes in the PSI that make it clear.

3 So the defendant has managed to rack up a  
criminal

4 history category of five, which is for all the criminal  
5 offenses that he's done in this case in this country.

6 Additionally, the defendant's conduct while in  
this

7 country indicates the fact that he was charged with death  
by

8 auto in Union County in -- and he fled to Texas, as the  
PSI

9 makes clear. And it took a numbers of years for the  
10 authorities to locate him. And he had to be extradited  
from

11 Texas back to Union County here in New Jersey to face  
those

12 charges. By that point, the case was a number of years  
old

13 and the defendant was sentenced to five years  
incarceration

14 after that particular offense. That was the offense that  
15 was one of the two offenses that served the basis for his  
16 first deportation.

17 So it's the Government's contention here that  
the

18 defendant clearly has shown no respect for the laws of  
this

19 country while he's in this country and, rather than being

20           rewarded for his alien status, that under the factors  
listed

21           in Section 3553(a), the defendant should be held

22           accountable.

23                       The second, Your Honor, is the defendant's  
argument

24           that he has had a harsh condition in Passaic County Jail,

25           and I'm sure this is not the first application Your Honor

JOHN KEVIN STONE, CSR



13

not 1 has seen based on this particular submission. And I'm  
2 going to stand up here and claim that staying in Passaic  
3 County Jail is the same as staying in the Waldorf.  
Because 4 that would not be the truth.

5 But the bottom line is, Your Honor, is that it  
is a 6 correctional facility. And as I've indicated to Your  
Honor 7 in my submission, the defendant hasn't proven that his  
8 experience there was in any way out of the ordinary. It  
9 might not have been pleasant, and I'm not going to stand  
10 here and defend --

11 THE COURT: Please don't do that. I've had so  
many 12 defendants who have consistently over the years told me  
of 13 the conditions in that jail. They're intolerable.

14 MS. JAMPOL: Yes. And I've been seeing an  
increase 15 in those motions, and I've been speaking to my  
counterparts 16 to relay that. So I won't do that before Your Honor.

17 What I will do is point to the case law in our  
18 circuit, as I do, that indicates that the defendant has  
to 19 prove that his stay was out of the ordinary.

20 THE COURT: It is out of the ordinary. I can  
take

21       judicial notice of that. Because in the years I've been  
22       sitting here meting out sentences, I had affidavits --  
now I  
23       don't have one here, but I certainly can take judicial  
24       notice that the conditions in that facility are  
intolerable.  
25       I had a defense attorney come up from the south and he  
said

JOHN KEVIN STONE, CSR

14

1 he's never seen anything like it yet in his practice.

2 Anyway, it's not your fault.

3 MS. JAMPOL: Obvious --

4 THE COURT: But --

5 MS. JAMPOL: -- and obviously the message is  
6 something that our office is looking at, this issue.

7 THE COURT: Well, you better look at it well.

8 MS. JAMPOL: I will impart that. I have had  
9 discussions with my supervisor.

10 THE COURT: It's not right. It's not human.  
It's

11 just not fair to put somebody in that kind of a facility.

12 MS. JAMPOL: The second argument I'm going to  
make,

13 and take it for what it's worth, Your Honor, is that the  
14 length of the defendant's stay at Passaic was not  
unusually

15 long. And I myself have handled -- and you're looking  
16 skeptical, but I'm going to keep on making the argument,  
17 Your Honor, is I've had cases where defendants have been  
in

18 that jail for a much longer period of time.

19 THE COURT: So have I.

20 MS. JAMPOL: For example, a case I just finished  
21 before Judge Cavanaugh, there were defendants in there  
for  
22 over three years.

23 THE COURT: Well --

24 MS. JAMPOL: So the defendant's length of stay,

25 based on other cases in this district, was not  
particularly

JOHN KEVIN STONE, CSR

15

that 1 long within that facility. And that's my argument on  
2 point.

3 And I see where Your Honor is going with it, but  
4 thank you for affording me an opportunity to make an  
5 argument on this particular topic.

6 THE COURT: All right.

7 MS. JAMPOL: Thank you, Your Honor.

8 THE COURT: Let me address the defendant's  
9 application for downward departure from the guidelines.

10 I'm denying that application on the guidelines,  
11 because I recognize I have the discretion to downward  
12 depart. And I choose not to exercise that.

13 In fashioning a sentence under the Booker  
regime,  
14 which is reasonable under the circumstances, under Booker  
15 I'm required to take into consideration the factors  
itemized

16 in 18 U.S. Code 235 (3)(a), that is, the nature and  
17 circumstances of the offense; history and characteristics  
of

18 the defendant; the need for a sentence which will be  
19 sufficient, but not greater than necessary to reflect the  
20 seriousness of the offense; to promote respect for the  
law;

21 to provide just punishment; to afford adequate deterrence  
to

and           22           protect the public from further crimes of the defendant;  
                 23           to provide the defendant with needed educational,  
                 24           rehabilitational training.

a             25           Realistically, what we're talking about here is

JOHN KEVIN STONE, CSR

16

1 sentence that is sufficient but not greater than  
necessary.

2 There is a lot to be said in support of the Government's  
3 position here, in view of the criminal history category,  
in

4 view of twice being deported to El Salvador. The message  
5 doesn't seem to be getting through to you, Mr. Sanchez.

6 On the other hand, I'm not sure that we need to  
7 impose a sentence of 70 months. To me that is  
particularly

8 harsh, in view of the amount of time that was spent in  
9 Passaic County Jail. I don't care what you say, the  
10 conditions that have been reported to me over the years  
11 indicate to me that it's absolutely intolerable, and to  
12 impose 70 months on top, or even giving reflection to --  
to

13 impose a sentence in light of the amount of time this  
14 defendant spent in Passaic County Jail isn't necessary to  
15 provide adequate deterrence. Any amount of time in  
Passaic

16 County Jail will provide that.

17 In terms of reflecting the seriousness of the  
18 offense, I don't think 70 months is necessary to do that  
or

19 promote respect for the law. He would be given credit  
20 anyway for the amount of time spent there.

21 I'm going to reduce the sentence by 24 months to  
46

22 months, from 70 to 46. That, in my opinion, almost four  
23 years, reflects the seriousness of the offense, promotes  
24 respect for the law, provides just punishment, and meets  
the  
25 statutory factors.

JOHN KEVIN STONE, CSR



17

the 1 So, Mr. Sanchez, I don't know whether you got  
2 message or not, but the next time around you could be  
you 3 looking at even more than 70 months. Depends on where  
4 want to spend your time. But it's up to you. But you're  
on 5 the radar screen, so the next time around plan to spend  
6 substantial amount of time in a federal facility.

it 7 Pursuant to the Sentencing Reform Act of 1984,  
8 is the judgment of the court that the defendant, Erik  
9 Sanchez, is hereby committed to the custody of the Bureau  
of 10 Prisons, to be imprisoned for a term of 46 months.

shall 11 Upon release from imprisonment, Mr. Sanchez  
12 be placed on supervised release for a term of two years.  
13 Within 72 hours of release from the custody of the Bureau  
of 14 Prisons, he shall report in person to the probation  
office 15 in the district to which he is released.

not 16 While on supervised release Mr. Sanchez shall  
17 commit another federal, state or local crime; shall be  
18 prohibited from possessing a gun or other dangerous  
device; 19 and shall not possess any illegal controlled substance;  
and

20 shall comply with the other standard conditions that have  
21 been adopted by this court.

22 Based on the information presented, Mr. Sanchez  
is  
23 excused from the mandatory drug testing provision but may  
be  
24 requested to submit to drug testing during the term of  
25 supervision, if the probation officer determines a risk  
of

JOHN KEVIN STONE, CSR

18

1 substance abuse.

2 In addition, he shall comply with the following  
3 special conditions: He shall cooperate with the  
Immigration  
4 and Customs Service resulting from any problems in his  
5 status; he shall provide truthful information to the  
6 Immigration and Customs Service.

7 If deported, Mr. Sanchez shall not re-enter the  
8 United States without permission of the attorney general.  
9 If he does re-enter the United States, he shall report to  
10 the nearest probation office within 48 hours.

11 He shall cooperate in the collection of DNA with  
12 the probation office.

13 I find he does not have the ability to pay the  
14 fine, I'll waive the fine.

15 Further ordered he shall pay to the United  
States a  
16 special assessment of \$100, which is due immediately.

17 The rationale for the sentence is simple enough.  
18 Mr. Sanchez is being sentenced for illegally re-entering  
the  
19 United States after being deported to El Salvador. He  
has  
20 three prior felony convictions, including a conviction  
for  
21 death by automobile. He has been twice deported to El  
22 Salvador each time. Very difficult, I'm sure, to be

23        separated from your family. But I have no choice in  
24        imposing the sentence to reflect the fact that he is  
25        violating the law. He has accepted responsibility for  
his

JOHN KEVIN STONE, CSR

19

to           1       actions; has acknowledged his wrongdoing; plans to return  
             2       El Salvador, or perhaps another country.

             3               Based on all the factors presented, I think the  
for           4       sentence I've imposed satisfies the sentencing criteria  
             5       the purposes of sentencing. Reflected in that also is  
the           6       fact that he will be deported, which is an additional  
             7       penalty.

             8               Is there anything else?

             9               MS. JAMPOL: Nothing, Your Honor. Thank you.

10              THE COURT: Thank you.

11              MR. MC CAULEY: No, Your Honor. Except if you  
12       could recommend the Beaumont facility.

13              THE COURT: Yes. That's Beaumont, Texas, I will  
14       recommend that.

15              MR. MC CAULEY: Thank you, Your Honor.

16              THE COURT: Mr. Sanchez, good luck to you.

17              ( Court adjourned ).

18

19

20

21

22

23

24

25

JOHN KEVIN STONE, CSR